



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1996

Ms. Amy L. Whitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-0992

Dear Ms. Whitt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39746.

The City of Lubbock (the "city") received an open records request for certain documents pertaining to a contract the city has entered into for traffic signal control software.¹ You sought an open records decision from this office pursuant to section 552.305 of the Government Code, which relieves the city from making arguments as to why the requested information is excepted from required public disclosure but rather allows the city to rely solely on the arguments of third parties whose privacy or proprietary interests are implicated.

Consequently, this office notified representatives of Computran Systems Corporation ("Computran") that we received your request for an open records decision regarding its records. In our letter to Computran, this office requested an explanation as to why portions of its records were excepted from public disclosure, with the caveat that its failure to provide such an explanation within a reasonable time would result in this office instructing you to disclose the information. A representative of Computran has responded to our request and argues that the following documents are excepted from required public disclosure:

¹Although the city raises the issue as to the proper cost the city may charge for the requested materials and the manner in which the city may request a deposit from the requestor before the city begins to gather the materials, we note that cost questions arising under chapter 552 of the Government Code are now being addressed by the General Services Commission. We therefore advise the city to direct its costs questions to that agency.

- 1) all documents bearing copyright notices;
- 2) all documents relating to computer source codes, flow charts, and software documentation; and
- 3) all materials subject to a licensing agreement between Computran and the city containing a confidentiality provision.

We will discuss each of these sets of information in turn.

The federal copyright law does not make information confidential, but rather gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107. A governmental body must allow *inspection* of copyrighted materials unless one of the act's exceptions to required public disclosure applies to the information. Attorney General Opinion JM-672 (1987) at 2-3. Also, the requestor may make copies of copyrighted materials unassisted by the state. Attorney General Opinion MW-307 (1981). "Of course, one so doing assumes the risk of a copyright infringement suit." *Id.* at 2. Thus, assuming the requested materials are in fact copyrighted, the city must allow the requestor to view it except to the extent that the materials are otherwise excepted from required public disclosure. The city must also allow the requestor to reproduce the material without the city's assistance so long as the reproduction would not unreasonably disrupt the city's working conditions. See Attorney General Opinion JM-757 (1987). It will then be the requestor's responsibility to adhere to the federal copyright law.

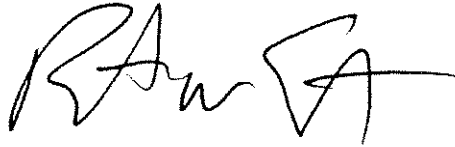
Although Computran argues that all computer source codes and software documentation constitutes trade secrets under section 552.110 of the Government Code, we need not in this instance determine whether they met their burden of such a demonstration in this instance. In Open Records Decision No. 581 (1990), this office determined that certain computer-related information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Accordingly, to the extent that the requested information consists of computer source codes, flow charts, and software documentation, it is not subject to the Open Records Act and the city therefore need not release this information.

Finally, Computran argues that because the licensing agreement between it and the city contains a confidentiality provision prohibiting the city from releasing "proprietary information, trade secrets and other confidential data," all information "covered by the software license agreements" must be withheld. We note, however, that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through

a contract, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). Consequently, the requested information is excepted from required public disclosure only to the extent that it falls within one of the act's exceptions, notwithstanding any contract between the city and Computran specifying otherwise. Because this office has determined that only the source code information, software documentation, and flow chart information is excepted from required public disclosure, the city must release all remaining information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', followed by a large, stylized flourish or initial.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/RWP/rho

Ref.: ID# 39746

Enclosures: Submitted documents

cc: Ms. Lisa L. Gulick
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